



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2020-0528; FRL-8974-02-R3]

Air Plan Approval; Maryland; Negative Declaration for the Oil and Gas Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Maryland. This revision provides Maryland's determination, via a negative declaration, that there are no sources within its borders subject to EPA's 2016 Oil and Natural Gas control techniques guidelines (2016 Oil and Gas CTG). EPA is approving these revisions to the Maryland SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2020-0528. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

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SUPPLEMENTARY INFORMATION:

I. Background

On February 9, 2021 (86 FR 8742), EPA published a notice of proposed rulemaking (NPRM) for the State of Maryland. In the NPRM, EPA proposed approval of Maryland's negative declaration SIP submittal for the 2016 Oil and Gas CTG. On June 18, 2020, the Maryland Department of the Environment (MDE) submitted the negative declaration for the 2016 Oil and Gas CTG as a revision to the Maryland SIP.

The CAA regulates emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOCs) to prevent photochemical reactions that result in ozone formation. Reasonably available control technology (RACT) is a strategy for reducing NO_x and VOC emissions from stationary sources within designated nonattainment areas classified as moderate or above that are not meeting the national ambient air quality standards (NAAQS) for ozone. EPA has consistently defined "RACT" as the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility.

Control techniques guidelines (CTGs) and alternative control techniques (ACTs) form important components of the guidance that EPA provides to states for making RACT determinations. CTGs are used to presumptively define VOC RACT for applicable source categories. CAA section 182(b)(2)(A) requires that for ozone nonattainment areas classified as moderate or above, states must revise their SIPs to include provisions to implement RACT for each category of VOC sources covered by a CTG document. CAA section 184(b)(1)(B) extends the RACT obligation to all areas of states within the ozone transport region (OTR), including Maryland.

States subject to RACT requirements are required to enact controls for sources subject to

CTGs that are at least as stringent as those found within the CTG, either via the adoption of regulations or by issuance of single source permits that outline what the source is required to do to meet RACT. On March 6, 2016 (80 FR 12264), EPA issued a final rule entitled “Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements” (2008 Ozone Implementation Rule). In the preamble to the final rule, EPA makes clear that if there are no sources covered by a specific CTG source category located in an ozone nonattainment area or an area in the OTR, the state may submit a negative declaration for that CTG. See 80 FR 12264, 12278. The same negative declaration is allowed by the 2015 ozone NAAQS implementation rule.¹

On October 27, 2016 (81 FR 74798), EPA published in the Federal Register the “Release of Final Control Techniques Guidelines for the Oil and Natural Gas Industry,” (2016 Oil and Gas CTG). This CTG provided information to state, local, and tribal air agencies to assist in determining RACT for VOC emissions from certain VOC emission sources within the oil and natural gas industry. The 2016 Oil and Gas CTG replaces an earlier 1983 CTG entitled “Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants. December 1983.” EPA-450/3-83-007 (1983 CTG) 49 FR 4432; February 6, 1984. See 2016 Oil and Gas CTG, p. 8-1.

II. Summary of SIP Revision and EPA Analysis

According to Maryland’s June 18, 2020 submittal, MDE conducted a review of potential sources subject to the 2016 Oil and Gas CTG. This review consisted of a search of Maryland’s oil and gas well records, air permit records, EPA greenhouse gas reporting records, and the Standard Industrial Classification (SIC) system. MDE’s search identified a total of 13 facilities in Maryland operating in the production, processing, or transmission and storage segments of the

¹ The majority of the provisions for implementing the 2008 ozone NAAQS (including those related to negative declarations) were retained without revision for purposes of implementing the 2015 ozone NAAQS. See “Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements” (2015 Ozone Implementation Rule) 83 FR 62998 (December 6, 2018); and 40 CFR 51.1301.

oil and natural gas industry. However, none of these facilities had storage tanks or production wells that met or exceeded the applicability criteria of the CTG. MDE identified five facilities in the natural gas transmission sector, but determined that none of them had storage tanks with the potential to emit (PTE) more than 6 tons per year (tpy) of VOCs, which is the threshold for applicability of the CTG.² Additionally, MDE identified eight active individual production wells, but determined that none of these exceeded the 15 barrel equivalents per day per well, which is the threshold for CTG applicability.³ Other specific requirements of the 2016 Oil and Gas CTG and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

III. EPA's Response to Comments Received

EPA received four sets of comments on our proposed approval of Maryland's June 18, 2020 negative declaration SIP submittal. One comment was generally in favor of EPA's proposed action and will not be addressed in this action. A summary of the other comments and EPA's response is provided herein. All comments received are included in the docket for this action.

Comment 1: The commenter asserts that the tanks and production wells identified by MDE as being potentially subject to the CTG, but determined by MDE to not meet the applicability thresholds and therefore not subject to the 2016 Oil and Gas CTG, should have mechanisms to limit their PTE to ensure that they remain below the thresholds. The commenter provides the example of synthetic minor permits. The commenter further asserts that relying on emission factors or other engineering estimates would be arbitrary given the "many variables involved."

Response 1: EPA disagrees with the commenter's assertions. First, AP42 emissions factors and the engineering estimates (i.e. modelling) relied upon in Maryland's submittal are

² See 2016 Oil and Gas CTG at 3-6.

³ See *Id.* at 3-7.

generally accepted and are used regularly in place of direct emissions measurement. Therefore, MDE's reliance upon them for the purposes of this negative declaration is not "arbitrary." EPA further disagrees with the commenter's assertion that the reported facilities should have synthetic minor permits or other enforceable limits on their PTE, and that it is "implausible" to claim that these facilities could have PTEs below the applicability thresholds absent such limits. In support of this claim, the commenter offers merely the "many variables involved," such as varying composition of the gas over time. EPA's review of Maryland's submittal shows that the referenced sources all report emissions well below the thresholds. For the potentially affected storage vessels (tanks), Maryland provided extensive documentation, including calculations that considered ambient temperature variations, throughput, and chemical composition of the liquids stored in the tanks. All emissions reported were considerably under the applicability threshold for storage vessels. For example, of the six potentially affected tanks identified at the Dominion Cove Point facility, the highest emissions reported were 0.02 tpy of VOC, which is significantly below the 6 tpy threshold. See Attachment A of MDE's June 18, 2020 submittal. The overwhelming majority of the tanks analyzed reported emissions of only a fraction of a ton per year. The highest reported emissions were for the two condensate storage tanks at the Accident compressor station. Each of those had calculated emissions of 1.2 tpy, still well below the threshold. See Attachment B of MDE's June 18, 2020 submittal.

Similarly, EPA disagrees that the identified production wells need enforceable limits on their production. First, the commenter has provided no evidence to contradict MDE's evaluation of the wells' outputs. Second, MDE certified in their submittal that their evaluation of the production wells was based on a search of their permit records. Each of the listed wells was constructed under a permit issued by Maryland. MDE is therefore well positioned to review the data associated with each of those permits and make an accurate determination of each well's output. EPA finds no reason to determine that MDE's determination with respect to the wells was unreasonable.

EPA believes that there is a sufficient margin between the reported emissions and the applicability threshold to determine that the identified sources do not need enforceable PTE limits in order for EPA to approve Maryland's negative declaration. Furthermore, Federal regulations are only necessary if a covered source exceeds the applicability thresholds established by the CTG. Maryland has certified that none of the sources within its jurisdiction exceed these thresholds. Should any of the reported sources exceed the thresholds in the future; or should a new source of the type covered by the existing CTG emitting more than either threshold be constructed in the state after approval of a negative declaration, EPA expects the state to develop a regulation and submit it to EPA for approval into the SIP in accordance with the relevant timing provided for by the CAA. Additionally, it is likely that any significant change in the operation of the existing facilities which would impact their PTE would be subject to preconstruction review by MDE. The same is true for the construction of new sources. At this time, because Maryland does not have any sources subject to the 2016 Oil and Gas CTG, no regulation is required to be developed and submitted for EPA approval. Therefore, we disagree with the commenter and are finalizing our approval of Maryland's negative declaration.

Comment 2: The commenter asserts that EPA should disapprove MDE's June 18, 2020 submittal because it relies on TANKS modelling, which utilizes outdated information, including temperature/climate data which is "all over 10 years old." The commenter further takes issue with the use in the model of 70 degrees Fahrenheit (F) as an average temperature, asserting that summer temperatures routinely exceed that mark, and that it is "settled science" that as temperatures rise, so do VOC emissions. The commenter asserts that EPA "cannot assume with a straight face" that these tanks will only operate at 70 degrees F, that the 70 degrees F assumption is only valid for indoor, climate-controlled situations, and that MDE's negative declaration should be disapproved because the model was improperly performed and did not consider "current and realistic temperature and climatic data." Finally, the commenter asserts that the model should be run using "average climatic data for each month."

Response 2: EPA disagrees with the commenter’s assertions. First, the CTG provides flexibility and does not require a specific method for calculating VOC emissions. The model rule language provided in the CTG requires only that “emissions must be calculated using a generally accepted model or calculation methodology.”⁴ The new source performance standards of title 40 of the Code of Federal Regulations (CFR) part 60, subpart OOOOa, (also applying to the oil and natural gas sector) include similar language. See 40 CFR 60.5395a(a)(3). E&P TANKS is a “generally accepted” model, and therefore an appropriate tool for calculating VOC emissions for the purpose of this negative declaration. In fact, the model was one of the resources utilized by EPA in the development of the CTG.⁵ Second, while EPA acknowledges that ambient temperatures impact VOC emissions from storage vessels, we do not agree that the assumption of 70 degrees F as an average temperature within the model is inappropriate. Furthermore, contrary to the commenter’s assertion, the use of 70 degrees as an average is not an assumption that the tank will never operate above that temperature. MDE identified six facilities that had tanks potentially subject to the CTG: the Dominion Cove Point LNG facility, the Dominion Myersville compressor station, the Enbridge Eastern Accident compressor station, the Enbridge Accident underground storage facility, the Williams Transco Ellicott City compressor station, and the TransCanada compressor station. The documentation provided by MDE included submittals from the potentially impacted sources, including the results of TANKS modelling to evaluate their particular storage vessels. Of the six facilities identified, only the Dominion facilities appear to have run the model with an “across the board” assumption of 70 degrees as the ambient temperature.⁶ See attachments A-D of MDE’s June 18, 2020 submittal. Temperature data from the National Weather Service for the Baltimore⁷ area for 2020 show that

⁴ See section A.2(i) of Model Rule Language; 2016 Oil and Gas CTG; Appendix A at A-8.

⁵ See 2016 Oil and Gas CTG at 4-3.

⁶ MDE’s submittal did not include documentation for the modelling runs at the TransCanada compressor station. Rather, an email from the company to MDE indicated that they performed TANKS modelling on four tanks, with a total emission estimate across all units of 0.66 tpy. See attachment D of MDE’s June 18, 2020 submittal.

⁷ Data for the Cove Point area was not immediately available, but Baltimore is close enough to provide a representative example.

only three months - June, July and August - exceeded an average monthly temperature of 70 degrees (75.1, 82.6, and 78.7 degrees, respectively).⁸ The other nine months were below 70. Using 70 degrees as an average for all twelve months is therefore a conservative approach, as the over-estimating for nine months offsets the potential under-estimating for the other three. Furthermore, Dominion reported emissions for six tanks, five at the Cove Point facility, and one at the Myersville compressor station. Of those tanks, only one reported any emissions at all. That tank, a 38,152 gallon tank, containing “hydrocarbons,” reported emissions of only 0.02 tpy AND is equipped with a control device (emissions are piped via a closed loop to a flare). See Attachment A of MDE’s June 18, 2020 submittal. The modelling for the Enbridge tanks, as well as the Williams Transco tanks, appears to have taken into account daily temperature variations and other variables to calculate actual monthly averages. See Attachments B and C of MDE’s June 18, 2020 submittal. This approach, which is in line with the commenter’s assertion, also results in emissions that, in all cases, are well below the 6 tpy threshold. We find these analyses (and MDE’s reliance upon them) to be reasonable. Therefore, we disagree with the commenter and are finalizing our approval of Maryland’s negative declaration.

Comment 3: The commenter asserts that EPA must disapprove MDE’s negative declaration because “the standards are not scientific or related to scientific procedures and are not consistent with the state’s development priorities for air, water, and noise.” Further, the commenter asserts that the SIP is not consistent with EPA’s “study on methane emissions from drilling operations,” that the guidelines “cannot be promulgated under the state’s authority” because they were “derived from an out-of-date methodology used in 2012,” and that MDE’s own review of “EPA’s 2012 study of hydraulic fracturing fluid emissions” identified a number of concerns about the findings.

Response 3: EPA disagrees with the commenter’s assertion that we must disapprove MDE’s June 18, 2020 submittal. First, the commenter makes several references to “hydraulic

⁸ See <https://www.weather.gov/media/lwx/climate/bwitemps.pdf>

fracturing” (fracking), but none of the wells addressed by MDE’s submittal employ fracking as a means of extraction. Indeed, Maryland has imposed a “fracking ban,” and does not allow the practice within the State. See Md. Code Ann. Environment section 14-107.1. Therefore, fracking plays no role in MDE’s negative declaration or EPA’s approval. Second, it is not entirely clear to which allegedly out of date “methodology” and allegedly unscientific “standards” the commenter is referring. If the commenter is referring to the CTG itself, the validity of the CTG is not at issue in this action and will not be addressed here. This action relates only to MDE’s certification that there are no sources within the State subject to the CTG. The commenter has not identified any flaws specific to MDE’s methodology for making that determination, nor with EPA’s proposed approval. Therefore, we disagree with the commenter and are finalizing our approval of Maryland’s negative declaration.

IV. Final Action

EPA is approving Maryland’s negative declaration as a revision to Maryland’s SIP, to address the CAA requirements of section 182(b)(2)(A) and 184(b)(1)(B) under the 2008 and 2015 ozone NAAQS, as they pertain to the 2016 Oil and Gas CTG.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to Maryland’s negative declaration for the 2016 Oil and Gas CTG may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: September 15, 2021.

Diana Esher,
Acting Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. In § 52.1070, the table in paragraph (e) is amended by adding the entry “Negative Declaration for the 2016 Oil and Gas CTG” at the end of the table to read as follows:

§ 52.1070 Identification of plan.

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(e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* * *	* * *		
Negative Declaration for the 2016 Oil and Gas CTG	Statewide	6/18/20	[insert date of publication in the Federal Register], [insert Federal Register citation]	Negative declaration submitted for the 2008 and 2015 ozone national ambient air quality standards.